IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 15410 of 2007(H)

PETITIONER:

M/S. RIYA RESORTS AND PROPERTIES (P) LTD
GULAB BUILDING, GROUND FLOOR 237,
P.D.MELLO ROAD, MUMBAI-400001 REP. BY ITS
POWER OF ATTORNEY HOLDER SRI.K.JOY JOSEPH.

BY ADV. SRI.M.P.SREEKRISHNAN

RESPONDENTS:

1. STATE OF KERALA, REP. BY ITS SECRETARY
TO GOVT., SECRETARIAT, TRIVANDRUM.

2. SUPERINTENDENT OF POLICE, KOLLAM.

3. ASSISTANT SUPERINTENDENT OF POLICE,
PUNALOOR.

4. CIRCLE INSPECTOR OF POLICE, KULATHUPUZHA.

5. SUB INSPECTOR OF POLICE, THENMALA.

6. THE KOLLAM JILLA PLANTATION WORKER'S
UNION (CITU), KALTHURUTHY P.O., PIN-691 309,
REPRESENTED BY ITS SECRETARY, M. SALIM.

BY GOVT. PLEADER SRI.P.A.SALIM
BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.B.S.SWATHY KUMAR
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 15410/2007

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE SALE DEED NO.2840 DT. 23.6.05

EXT. P2 TRUE COPY OF AGREEMENT DT. 22.6.05

EXT. P3 TRUE COPY OF INTERIM ORDER IN WPC 2077/06 DT. 23.1.06

EXT. P4 TRUE COPY OF JUDGMENT DT. 26.9.06 IN WPC 2077/06

EXT. P5 TRUE COPY OF PETITION FILED BY THE PETITIONER TO THE 5TH RESPONDENT DT. 2.5.07

EXT. P6 TRUE COPY OF REPRESENTATION DT. 4.5.07 BY THE PETITIONER TO THE 2ND RESPONDENT

EXT. P7 TRUE COPY OF STATEMENT OF 39 EMPLOYEES DT. 4.11.06

EXT. P8 TRUE COPY OF STATEMENT DT. 14.4.07 BY THE PETITIONER TO THE REGIONAL JOINT PROVIDENT FUND COMMISSIONER, KOLLAM

RESPONDENTS' EXHIBITS:

EXT. R6(I) TRUE COPY OF THE LIST OF TEMPORARY WORKERS OF THENMALA DIVISION

EXT. R6 (II) TRUE COPY OF THE PROCEEDINGS NO.LS-40703 DT. 22.2.06 OF THE DISTRICT COLLECTOR, KOLLAM

/TRUE COPY/

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

W.P.(C)No. 15410 of 2007 H

JUDGMENT

Balakrishnan Nair, J.

The petitioner is a Private Limited Company, which purchased 83.61 hectares of land in Thenmala Village from M/s.Harrison Malayalam Limited, Kochi. It is a rubber estate. According to the petitioner, in the said portion of the estate, 39 workers of Harrison Malayalam Limited were working. Out of them, 21 have been engaged by the petitioner as rubber tappers and the balance as field workers. There is no dispute between the petitioner and the workmen so engaged. While so, the sixth respondent union has come forward espousing to cause some outside workers. The said union seeks employment for them. According to the petitioner, all the 39 workers are engaged by the petitioner, though actually, services of all of them are not required.

The claim of the outsiders have no legal basis. But, the sixth respondent union is physically obstructing their regular workmen in doing the work in the estate. Therefore, the petitioner has moved the police by filing Exhibits P5 and P6 representations claiming protection against the illegal acts of the sixth respondent and their members. Since the police did not interfere saying that it is a labour dispute, this writ petition is filed seeking the following relief:

> "to issue a writ of mandamus or any other appropriate writ or order directing respondents 2 to 5 to give sufficient police protection to the petitioner and its staff and workers for functioning the office and doing agricultural operations in the estate known as 'Thenmala Division' owned by the petitioner in Thenmala Village under Exhibit P1 and remove the obstruction by 6th respondent Union, its members or any other persons."

2. The sixth respondent has filed a counter affidavit challenging even the locus standi of the petitioner to file this writ petition. The petitioner's right over the estate is disputed. Reliance is placed on Exhibit R6(2), by which, the application of the petitioner for mutation of the land purchased by them under Exhibit P1 has been rejected by the District Collector. They also submitted that the workmen mentioned in Exhibit R6 (1) are temporary workers attached to the estate purchased by the petitioner. They are entitled to get work. Denial of work is unjustified. Further, the petitioner is not attending the conciliation meeting convened by the Regional Joint Labour Commissioner, Kollam. So, the sixth respondent prayed for dismissal of the writ petition.

3. The learned Government Pleader, upon instructions, submitted that the police did not interfere in the dispute, as the same is a labour dispute.

4. The dispute raised by the sixth respondent regarding title of the petitioner over the estate is not a matter which can be adjudicated by the police or by this Court in these proceedings. Under Exhibit P1 document, the petitioner has got possession of the property and at present he is running the estate. Therefore, for the limited purpose of maintaining this writ petition, the petitioner's locus standi has to be upheld. This will not affect the rights of the statutory authorities or the Government officials in taking action against the petitioner or its vendor. In other words, the actions of the Revenue or the Forest Departments against the petitioner will, in no way, be fettered by this order.

5. The learned counsel for the petitioner submitted that some of the workmen, named in Exhibit R6(1), are presently engaged by the petitioner. Whether all the persons mentioned in Exhibit R6(1) were the employees of the estate

purchased by the petitioner and therefore, they are entitled to get employment is a disputed question of fact. That is pending consideration before the Regional Joint Labour Commissioner, Kollam. Prima facie, we accept the contention of the petitioner that it has employed all the workmen attached to the estate. If any obstruction is caused by the sixth respondent or its members to the petitioner or its workmen, the petitioner may inform the police. In that event, the police shall remove the obstruction. But, this direction will be subject to the condition that the petitioner shall attend and co-operate with the conciliation proceedings. Further, if the Regional Joint Labour Commissioner finds that the facts mentioned above, based on which, we have passed an order in favour of the petitioner, are incorrect, the said Officer may direct the petitioner to engage the workmen, who, according to the said Officer, have been working in the estate purchased by the petitioner and are

presently denied employment by the petitioner. Continuance of the police protection will depend upon the implementation of the direction, if any, the Regional Joint Labour Commission may pass in this regard. The petitioner or the sixth respondent may produce a copy of this judgment before the Regional Joint Labour Commission at the time of conciliation, so that he can render a prima facie finding regarding the claim of the employees represented by the sixth respondent and may ask the petitioner to prefer them for employment. Of course, the industrial dispute has to be ultimately decided by the Labour Court on reference of the same by the Government. The directions issued by the Regional Joint Labour Commissioner will be implemented by the petitioner as a condition for getting continued police protection. But, those directions will not bind either the petitioner or the workmen when the matter is decided by the Labour Court/Tribunal, if a reference of the

dispute is made to them by the Government. It is made clear that the above direction issued by us will not be taken as a ground to deny employment to the workmen, who are already engaged by the petitioner.

With the above directions, the writ petition is disposed of.

(K.Balakrishnan Nair, Judge)

3rd December, 2007

(K.P.Balachandran, Judge)

tkv